

REMARKS

The present Amendment is being submitted in response to the Official Action mailed January 24, 2008. Claims 1 and 10 have been amended herein, and claims 11 and 19-24 have been previously canceled. Thus, claims 1-10 and 12-18 remain pending in the present application. The following sets forth Applicants' remarks pertaining to the outstanding Action and the currently pending claims.

As an initial matter, Applicants respectfully thank the Examiner for conducting the telephone interviews of March 26 and 27, 2008 with Applicants' undersigned counsel. During those discussions, the rejections set forth in the Action were discussed. Subsequent to the first discussion, Applicants' counsel forwarded a proposed set of amended claims to the Examiner for his review. During the March 27th discussion, the Examiner indicated to Applicants' counsel that he had reviewed the proposed amended claims and that they would overcome the rejections set forth in the Action. In fact, the Examiner indicated that such claims were allowable, subject only to an updated search and updated review of the prior art cited in this case to date. This is confirmed by the Examiner's Interview Summary dated April 7, 2008. Although an agreement was reached with the Examiner, Applicants take the opportunity below to more specifically discuss the rejections set forth in the Action.

In the Action, the Examiner rejected claims 1-10 and 12-18 under 35 U.S.C. § 103(a) as being obvious over the combination of U.S. Patent No. 6,730,127 to Michelson ("Michelson") and U.S. Patent No. 6,235,059 to Benezech et al. ("Benezech"). Essentially, the Examiner asserted that Michaelson teaches each and every one of the limitations of the claims (most notably independent claims 1 and 10) of the present application, save for an insertion plate being removably connected with the first and second members of the

intervertebral disc replacement device claimed in such claims. The Examiner cited Benezech as teaching an insertion plate and noted that it would have been obvious to combine Michelson with Benezech to arrive at the present invention. Furthermore, the Examiner acknowledged that even the combination of Michelson and Benezech did not disclose certain other limitations set forth in certain of the claims, but simply noted those claims as also being obvious in view of the combination.

In the aforementioned telephone interviews, Applicants' undersigned counsel put forth several arguments pertaining to the Michelson and Benezech references. Specifically, Applicants' counsel submitted that both Michelson and Benezech are directed towards fusion implants that do not include first and second members for insertion into an intervertebral disc space. The Examiner pointed out that in his rejections of the previously presented claims, he referenced two different portions (e.g., reference numerals 106 and 108 in FIG. 2) of Michelson as satisfying the first and second member limitations of the previously presented claims. In response to Applicants' arguments that these first and second members are not separate or articulable with respect to each other, the Examiner further suggested that Applicants amend independent claims 1 and 10 to make it clear that the first and second members be capable of articulating with respect to one another. As such, Applicants have submitted amendments herein of both independent claims 1 and 10 in which the first and second members are both required to have first and second articulation surfaces, respectively, that allow movement of the members with respect to each other. In the second telephone interview of March 27th, the Examiner acknowledged that these amendments were in fact what he had in mind and that such would overcome the Michelson and Benezech combination. Applicants do note here that the entire substance of their arguments, the amendments

made herein, and the telephone interviews of March 26 and 27, 2008 revolved around the above-discussed two member configuration of the implant, but that they do not make any admission as to the Michelson and Benezech references teaching certain of the other limitations of those claims. For instance, Applicants firmly believe that even the combination of Michelson and Benezech does not teach an insertion plate or a drill guide similar to the one set forth in the currently pending claims.

Because the Examiner has agreed that the amendments of independent claims 1 and 10 overcome the Michelson and Benezech references, Applicants respectfully submit that such claims now constitute allowable subject matter. Although each and every one of the respective dependent claims is not specifically discussed herein, Applicants note that such claims would also necessarily constitute allowable subject matter based solely upon their proper dependence from one of independent claims 1 or 10, or an intervening claim. Thus, in light of all of the above, Applicants respectfully request allowance of each and every one of the currently pending claims.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No.: 10/781,505

Docket No.: SPINE 3.0-455 CIP CONT IV

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: April 15, 2008

Respectfully submitted,

By 

Kevin M. Kocun

Registration No.: 54,230

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants

LD-447\